

United States District Court

EASTERN DISTRICT OF WISCONSIN

COURT MINUTES

HON. **PATRICIA J. GORENCE**, presiding.

Deputy Clerk: Mary

DATE: **October 2, 2013**

Court Reporter:

CASE NO. **13-CR-112**

Time Called: 2:33:06

UNITED STATES v. **Nicholas Herburger**

Time Concluded: 2:56:54

PROCEEDING: **Hearing on Motion for Conditions of Release**

UNITED STATES by: **Bridget J. Domaszek**

Probation Officer: Stephanie Mott

Interpreter:

DEFENDANT: **Nicholas Herburger**, in person, and by

ATTORNEY: **William Burke**

Court gives background of case.

DEFENSE notes that prior defense counsel filed the motion for conditions of release and Atty Burke will be following that motion, but will be adding something to it.

- Deft was involved in distribution and use of heroin.
- Deft has been drug free since he was detained.
- Deft is at lesser risk and not a danger to himself or others.
- Defense proffers deft be released to Hazelden Treatment Center, Center City, MN. Deft paying for his stay.
- Deft still needs to have approx. 1 hour conversation with people at Hazelden and that can be arranged through the Dodge County Jail. Assuming that goes well, they have a space available for deft on 10/11/13.
- Request that deft be released on 10/10/13 in the custody of his sister or defense counsel.
- Sister or defense counsel will arrange for the deft transportation to Hazelden.
- Deft agrees to do this.
- After 30 days at Hazelden deft would come back to this court for a hearing to update the court.

GOVT:

- Opposes deft's release because it doesn't adequately protect safety of community or himself.
- At the last hearing 6/20/13, govt discussed the factors that supported his detention and that starts with the presumption, serious drug offense and deft faces significant time of incarceration if convicted.
- There was a victim who overdosed and was in a coma for 2 weeks.
- Deft sober since he has been detained, but with respect to any other treatment needs, these can be addressed in another setting.

COURT notes this is a serious offense and it carries significant penalties. Based on the weight of the evidence as represented by the govt it appears that is strong also. However, the court has reviewed deft's prior record. Court realizes getting more treatment would be a benefit to deft.

Court grants deft's motion and will release deft on an O/R bond with the following conditions:

- Release deft on 10/10/13 to participate in a treatment program at Hazelden, Center City, MN. Deft to pay the cost of this treatment.
- Deft will be released on 10/10/13 to custody of his sister or defense counsel who will make the arrangements to get deft to Hazelden.
- Deft will need to be there for a period of 30 days and deft will need to abide by all terms and conditions at Hazelden. If deft does not, court will need to be advised and deft will be brought back to this court to address the situation.
- Deft needs to sign a waiver/release of medical records from Hazelden so that he can provide those records to the Pretrial Services.
- Travel restricted to Wisconsin since deft will need to drive through Wisconsin to get to Hazelden.
- Report to Pretrial Services as directed.
- Deft will remain in custody until 10/10/13 at which time he will go to Hazelden for treatment.
- Once deft is released from Hazelden he will return to this court for a status hearing.
- The records from Hazelden will need to be provided to Pretrial Services before that hearing takes place.

Cont'd Bond Hearing set for November 12, 2013 at 2:30 p.m.